

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

|                                   |   |                  |
|-----------------------------------|---|------------------|
| In the Matter of the Petition for | ) |                  |
| Redetermination of                | ) | DOCKET NO. 20543 |
|                                   | ) |                  |
| [REDACTED],                       | ) | DECISION         |
|                                   | ) |                  |
| Taxpayer.                         | ) |                  |
| _____                             | ) |                  |

On August 14, 2007, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (Taxpayer) asserting amusement device permit fee penalties totaling \$1,600 for the period July 1, 2007, through June 30, 2008.

The Taxpayer protested the Notice of Deficiency Determination in a letter dated September 12, 2007. At the Taxpayer's request, the Commission held a hearing via telephone on January 15, 2008.

Having reviewed the audit file, the protest letter, applicable Idaho statutes, and other relevant information, the Commission hereby upholds the Notice of Deficiency Determination based on the following.

The Taxpayer operates a business that contains 32 amusement devices. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits or display the decals that are evidence the required fees have been paid. The code section is noted below, in pertinent part:

**63-3623B. Amusement devices.** (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.....

(d) All applications for a permit renewal must be made to the state

tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.....

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code...

The Taxpayer does not argue that the amusement devices require decals, but it bought the decals on August 14, 2007, approximately six weeks after the July 1 deadline.

In its letter of protest the Taxpayer wrote:

We have been in business many years and have always paid our amusement device fees. This year we are changing ownership of the ...business and each of us thought the other was attending to this detail of paying the fees. When it was discovered that it had not been paid, we did so only to find you have a new policy of fining the owner if paid late. (Correspondence dated September 12, 2007.)

The Commission reviewed the transaction history of the Taxpayer and notes that it has routinely purchased decals after the July 1<sup>st</sup> deadline. For the tax year ending June 30, 2003, the purchase was five weeks late; for 2004, four weeks late; for 2005, one week late; for 2006, nine weeks late; for 2007, two weeks late; and, for the current year, six weeks late.

The amusement device decal statute cited above has been in effect since 1995 and since that time has included the penalty provision. Although the penalty has not been assessed against this Taxpayer in the past, it is not new as the Taxpayer states in its protest letter. The Commission routinely sends out timely registration forms so that taxpayers can buy and then affix decals prior to the deadline imposed by the statute. In the past two years, and concurrent with the registration

reminder mailings, the Commission has increased its efforts to educate taxpayers about the penalty provisions.

The risk of a penalty can encourage compliance. In the current instance, the history suggests that without a penalty imposed as motivation, the Taxpayer did not sense a sufficient obligation to comply timely. The hearing revealed that, although business ownership may have been a factor in late compliance, the individual with responsibility for decal purchases in the prior years is still responsible for those purchases. For these reasons, the Commission believes that upholding the penalty asserted by the audit staff is warranted.

WHEREFORE, the Notice of Deficiency Determinations dated August 14, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the Taxpayer pay the following penalty: \$1,600.

An explanation of [Redacted] right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

## **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No

\_\_\_\_\_